

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

REO PROPERTIES CORP.,

Plaintiff

v.

EDWIN ENCARNACIÓN-KUILAN,

Defendant

CIVIL NO. 08-1943 (JP)

DEFAULT JUDGMENT

The Court has before it Plaintiff's motion for default judgment (No. 10) against Defendant Edwin Encarnación-Kuilan. The motion is **GRANTED**. Upon Plaintiff's motion for judgment, and it appearing from the records of the above-entitled case that default was entered by the Clerk of this Court against Defendants on April 23, 2009 (No. 8) for his failure to plead or file an answer to the Complaint or otherwise appear in the above cause, Plaintiff is entitled to a judgment by default.

IT IS HEREBY ORDERED:

1. On September 28, 2004, the original borrower - the Defendant - subscribed a mortgage note for the principal amount of \$115,000.00 with interest at the rate of six and one fourth percent per annum.

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2. Said mortgage note was subscribed in favor of or to the order of Doral Bank. Plaintiff is currently the holder of said mortgage.

3. For the purpose of securing the payment of said note, a mortgage was constituted by Deed Number 216, dated September 28, 2004, before Notary Public Teresa González-Ferrer, over the following real property:

---URBANA: PROPIEDAD HORIZONTAL: Apartamento Número "J" GUIÓN CINCO (J-5), construido de bloques y hormigón y localizado en el Edificio "J", Tercer Nivel del CONDOMINIO PASEO RÍO HONDO, radicado en el Barrio Sabana Seca del término municipal de Toa Baja, Puerto Rico. Consta de un área superficial de mil ciento setenta y cinco punto dos mil quinientos sesenta mil ochocientos cuarenta y nueve (109.1849) metros cuadrados. En lindes: por el NORTE, en una distancia de treinta pies ocho pulgadas (30' 8"), con el Apartamento K guión seis (K-6); por el SUR, en una distancia de treinta y dos pies cero pulgadas (32' 0"), con elemento común y Apartamento J guión seis (J-6); por el ESTE, en una distancia de cuarenta y un pies nueve pulgadas (41' 9"), con elemento común limitado; y por el OESTE, en una distancia de cuarenta y un pies nueve pulgadas (41' 9"), con elemento común. Este Apartamento consta de sala, comedor, cocina, un dormitorio principal, (master bedroom) con su closet y baño), dos dormitorios con sus closets y un baño, closet, laundry en el área del pasillo, balcón y foyer. La puerta de entrada de este Apartamento está situada en su lindero oeste y comunica directamente al área del recibidor (foyer) del Apartamento.

Plaintiff's mortgage is recorded at page 155, volume 496, property number 27,311, at the Registry of the Property of Bayamón Section II, Puerto Rico.

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4. Defendant owner of record of this property has failed to comply with the terms and conditions of the mortgage contract and has refused to pay the stipulated monthly installments, in spite of Plaintiff's demands and collection efforts.

5. Defendant's indebtedness with Plaintiff is:

- a) \$112,218.32 of aggregate principal;
- b) \$17,573.54 of interest accrued as of March 26, 2009, and thereafter until its full and total payment;
- c) Costs, charges, disbursements, and attorneys' fees in the amount of \$11,500.00, plus all expenses and advances made by Plaintiff.

6. Defendant, as debtor of the amounts prayed for in the Complaint, are hereby **ORDERED** to pay unto Plaintiff the amounts specified and set forth in the preceding paragraph, paragraph five.

7. In default of the payment of the sums herein specified or of any part thereof within the ten days from the date of entry of this Judgment, said property shall be sold by the U.S. Marshal of this Court or a Special Master at a public auction to the highest bidder thereof, without an appraisalment or right of redemption for the payment and satisfaction of Plaintiff's mortgage within the limits secured thereby.

8. The U.S. Marshal of this Court or the Special Master shall make the sale mentioned herein in accordance with 28 U.S.C. Sections 2001 and 2002 and the applicable provisions of the

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Commonwealth of Puerto Rico Mortgage Law. The notice of sale shall be published in a newspaper of general circulation once a week during four consecutive weeks. The amount of \$115,000.00 shall serve as the minimum bid for the first public sale. Should the first public sale fail to produce an award or adjudication, two-thirds of the aforementioned amount shall serve as the minimum bid for the second public sale. Should there be no award or adjudication at the second public sale, the basis for the third sale shall be one-half of the amount specified as minimum bid for the first public sale. The U.S. Marshal of this Court or the Special Master shall proceed to issue the corresponding notice of sale to be published in a newspaper of general circulation without the need of further orders or writs from this Court. Such sale shall be subject to the confirmation of this Court. Upon confirmation, the U.S. Marshal shall execute the corresponding deed of judicial sale to the purchaser and he shall be entitled to the delivery of the property sold and its physical possession, in accordance with law. Said possession may be obtained through eviction of the occupant of the property without the need of further order of this Court if executed within sixty days from the confirmation of the public sale.

10. Any funds derived from the sale to be made in accordance with the terms of this Judgment and such further orders of this Court shall be applied as follows:

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- a. To the payment of all proper expenses attendant upon said sale, including the expenses, outlays and compensation of the U.S. Marshal or Special Master appointed herein, after said compensation and expenses shall have been fixed and approved by this Court, all said expenses to be deducted from the sum of \$11,500.00, provided in the deed of mortgage for costs, charges and disbursements, expenses and attorneys' fees.
- b. To the payment of all expenses and advances made by the plaintiff for an amount not to exceed \$11,500.00.
- c. To the payment of that part of the indebtedness owed to Plaintiff up to the amount of \$112,218.32 of principal, with interest thereon from November 1st, 2006, until the date of full payment at the rate of 6.25% per annum, plus costs, charges, disbursements, expenses and attorneys' fees due in the above cause after deduction of the expenses mentioned in the preceding subparagraph (a).
- d. If after making all the above payments there shall be a surplus, said surplus shall be delivered to the Clerk of this Court, subject to further orders of the Court.

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11. The Property Registrar of the corresponding Property Registry of Puerto Rico shall proceed to the recording of the judicial sale deed in favor of the purchaser, free of any liens subsequent to the date of the execution of the foreclosed mortgage.

12. Plaintiff in these proceedings may apply to this Court for such further orders as it may deem advisable to its interest in accordance with the terms of this Judgment and the Clerk shall proceed to issue of course all necessary writs to enforce and execute the same. Fed. R. Civ. P. 77(a).

IT IS SO ORDERED.

In San Juan, Puerto Rico, this 30th day of April, 2009.

s/Jaime Pieras, Jr.
JAIME PIERAS, JR.
U.S. SENIOR DISTRICT JUDGE